

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

MOUNTAIN EXPRESS OIL COMPANY, et al.,

Debtors.¹

Chapter 11

Case No. 23-90147 (DRJ)

(Jointly Administered)

**MONTO FOOD MART INC., BROADWAY FUEL, INC., PRIME PETRO, INC.,
AMERICAN 1 GAS INC., COMMACK FUEL INC., AND RIVERDALE FUEL, INC.'S
EMERGENCY MOTION TO LIFT AUTOMATIC STAY**

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on August 15, 2023 at 1:00 p.m. (Prevailing Central Time). You may participate at this hearing either in person or by an audio and video connection, unless otherwise ordered by this Court. *See* Docket No. 119.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Jones's conference room number is 205691. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Jones homepage. The meeting code is "JudgeJones". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Jones' homepage. Select the case name, complete the required fields and click "Submit" to complete your appearance.

To the Honorable David R. Jones:

¹ A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors' proposed claims and noticing agent at www.kccllc.net/mountainexpressoil. The location of Debtor Mountain Express Oil Company's principal place of business and the Debtors' service address in these Chapter 11 cases is 3650 Mansell Road, Suite 250, Alpharetta, GA 30022.

Monto Food Mart Inc., Broadway Fuel, Inc., Prime Petro, Inc., American 1 Gas Inc., Commack fuel Inc., and Riverdale Fuel, Inc. (collectively, the “Operators”) file their Emergency Motion to Lift the Automatic Stay and state the following in support of this motion (this “Motion”):

SUMMARY

1. The Debtors have been unable to supply fuel to the Operators for well over seven days. The Operators request entry of an order lifting the automatic stay to authorize the purchase of fuel from non-debtor suppliers and the disconnection the Debtors’ payment processing machines. Emergency consideration is requested without an immediate and reliable source of fuel the Operators will be forced to cease operations.

I. JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND

A. General Background

4. On March 18, 2023 (the “Petition Date”), Mountain Express Oil Company and its affiliates (the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) which are jointly administered. The Debtors are continuing to operate and manage their properties as debtors in possession.

5. The Operators operate gas stations and convenience stores leased from the Debtors and are counterparties to certain fuel supply agreements (the “Fuel Supply Agreements”) with the Debtors in Yonkers area of New York. As provided in the respective fuel supply agreements, the

Operators can only purchase fuel exclusively from the Debtors. Prior to the Petition Date, the Debtors provided fuel on a continuous basis, however, after the Petition Date, the Operators were receiving sporadic fuel deliveries. The Operators operate on fairly slim margins by receiving a de minimis commission on fuel sales and income is largely derived from convenience store sales.

B. Post-Petition Operations

6. As a result of sporadic and significant delays in fuel deliveries, the Operators were forced to purchase fuel from third party suppliers at a premium. Although the Operators had purchased third party fuel, all of the payments were processed through the Debtors' credit card processing machines, thereby, resulting with the Debtors receiving all of the gas sales (even third party fuel). On or about May 25, 2023, the Operators disconnected the credit card processing machines and black boxes associated with the fuel accounts with the Debtors to prevent the Debtors from receiving payment for gas purchased by the third-party vendors.

7. On June 5, 2023, the Debtors filed their *Emergency Motion for (I) Entry of an Order to Appear and Show Cause Against Monto Food Mart Inc., Yonkers Fuel Inc., Broadway Fuel Inc., Prime Petro Inc., American 1 Gas Inc., Commack Fuel Inc., M&Y Pump Services Inc, and VM Petro, Inc. and (II) the Imposition of Compensatory and Coercive Sanctions Against the Subject Parties for Violations of the Automatic Stay* (the "Show Cause Motion") [Docket No. 488]. The Operators filed their response through their general counsel on June 16, 2023 [Docket No. 537]. On June 20, 2023, the Court conducted a hearing on the Show Cause Motion and entered its *Supplemental Order to Appear and Show Cause* [Docket No. 697] requiring the in person attendance of representatives of the Operators and to complete compliance inspections of the stores prior to a subsequent hearing on the Show Cause Motion.

8. The Operators retained the undersigned counsel on June 26, 2023 to represent their interests related to the Show Cause Motion. Through counsel, the Operators were able to complete inspections of the respective stores and reconnect the credit card machines and black boxes prior to the subsequent hearing on the Show Cause Motion held on July 10, 2023 (the “Show Cause Hearing”). An evidentiary hearing for the sanctions and damages related to the Show Cause Motion is currently set for September 12, 2023.

9. On June 16, 2023, the Debtors filed their *Emergency Motion for Entry of Orders (A)(I) Authorizing Asset Purchase Agreement for Sale of Substantially All of Debtors’ Assets, (II) Approving Bid Procedures for Sale of Debtors Assets, (III) Approving Bid Procedures for Sale of Debtors Assets, (III) Approving Bid Protections, (IV) Scheduling Certain Dates with Respect Thereto, (V) Approving the Form and Manner of Notice Thereof, and (VI) Approving Contract Assumption and Assignment Procedures; (B) Approving (I) Sale of Certain Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, and (II) Assumption and Assignment of Certain Contracts and Leases; and (C) Granting Related Relief* (the “Sale Motion”) [Docket No. 536] which was approved by the Court on June 22, 2023. On June 28, 2023, the Debtors filed their *Notice to Counterparties to Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 728] incorporating the Fuel Supply Agreements.

10. The auction commenced on August 2, 2023 and adjourned on August 4, 2023 and as provided in the Debtors’ Post-Auction Report [Docket No. 1194] the Debtors received a total of 16 unqualified bids but intended on moving forward with the proposal from GPM Investments, LLC for the sale of substantially all of the Debtors’ assets of \$49 million (the “GPM Transaction”). On August 7, 2023, the Court conducted a hearing on the Debtors’ *Emergency Amended Motion for Entry of Interim and Final Orders (A) Authorizing the Use of Cash Collateral, (B) Providing*

Adequate Protection, (C) Modifying the Automatic Stay, and (D) Scheduling a Final Hearing (the “Final Hearing”)[Docket No. 1196] where the Debtors announced the less than desired auction results, after comments from other parties in interest and the Court, the Debtors, creditors, and Unsecured Committee’s Counsel agreed to mediate an exit strategy for the Debtors not involving the GPM Transaction. Like many other gas station operators, the Operators are at the Debtors’ mercy without any fuel and ability to purchase fuel from other sources as the Debtors’ credit card processing machine is connected to the Operators’ tanks.

Excessive Delays in Fuel Deliveries Eventually Resulting in No Deliveries

11. Since the Show Cause Hearing, the Operators have worked diligently to rectify their errors and to be in compliance with the Court’s orders. With the exception of Operators Riverdale, Broadway Fuel, and Prime Petro¹, all Operators are current with their obligations under their respective leases and the Fuel Supply Agreements. The Debtors have been unable to fulfill their obligations under the Fuel Supply Agreements due to inaccurate billing and insufficient fuel allocations resulting in the irregular deliveries to the Operators.

12. Through the date of this Motion, the Operators have not received any fuel deliveries in over seven days. Without any direction as to if and when the Debtors can supply fuel, the Operators are left without any remedy but to move to lift the automatic stay to disconnect the Debtors’ credit card machines and request that they be permitted to purchase third party fuel.

The tables below detail various fuel levels of the Operators’ tanks:

Store 961 Monto Food Mart, Inc.

¹ Due to insufficient cash flow, Riverdale Fuel Inc., Broadway Fuel, and Prime Petro, Inc. are carrying delinquent balances with the Debtor from June rent and unpaid NSF charges and fuel payments; their delinquent payments total \$[•]

Date	Super Vol.	Super Capacity	Fuel Lvl	Reg. Vol.	Regular Capacity	Fuel Lvl	Diesel Vol.	Diesel Capacity	Diesel Lvl
7/12/23	761	4000	19%	638	12000	5%	2253	4000	56%
8/4/23	125	4000	3%	408	12000	3%	2386	4000	60%
8/5/23	125	4000	3%	407	12000	3%	2386	4000	60%

Store 962, Riverdale Fuel, Inc.

Date	Super Vol.	Super Capacity	Fuel Lvl	Reg. Vol.	Regular Capacity	Fuel Lvl	Diesel Vol.	Diesel Capacity	Diesel Lvl
7/11/23	263	6000	4%	2724	6000	45%	5101	6000	85%
7/19/23	900	6000	15%	301	6000	5%	4387	6000	73%
7/21/23	4535	6000	76%	301	6000	5%	4314	6000	72%
7/28/23	4255	6000	71%	5065	6000	84%	3805	6000	63%
8/7/23	260	6000	4%	301	6000	5%	2961	6000	49%

Store 963 Broadway Fuel, Inc.

Date	Super Vol.	Super Capacity	Fuel Lvl	Reg. Vol.	Regular Capacity	Fuel Lvl	Diesel Vol.	Diesel Capacity	Diesel Lvl
7/23/23	2135	4000	53%	968	10000	10%	749	4000	19%
7/29/23	2855	4000	71%	2004	10000	20%	2597	4000	65%

Store 965 Prime Petro, Inc.

Date	Super Vol.	Super Capacity	Fuel Lvl	Reg. Vol.	Regular Capacity	Fuel Lvl	Diesel Vol.	Diesel Capacity	Diesel Lvl
8/2/23	1053	4000	26%	408	12000	3%	2703	4000	68%
8/4/23	390	4000	10%	390	12000	3%	2580	4000	65%
8/5/23	186	4000	5%	390	12000	3%	2462	4000	62%
8/6/23	186	4000	5%	385	12000	3%	2462	4000	62%

Store 974 Commack Fuel, Inc.

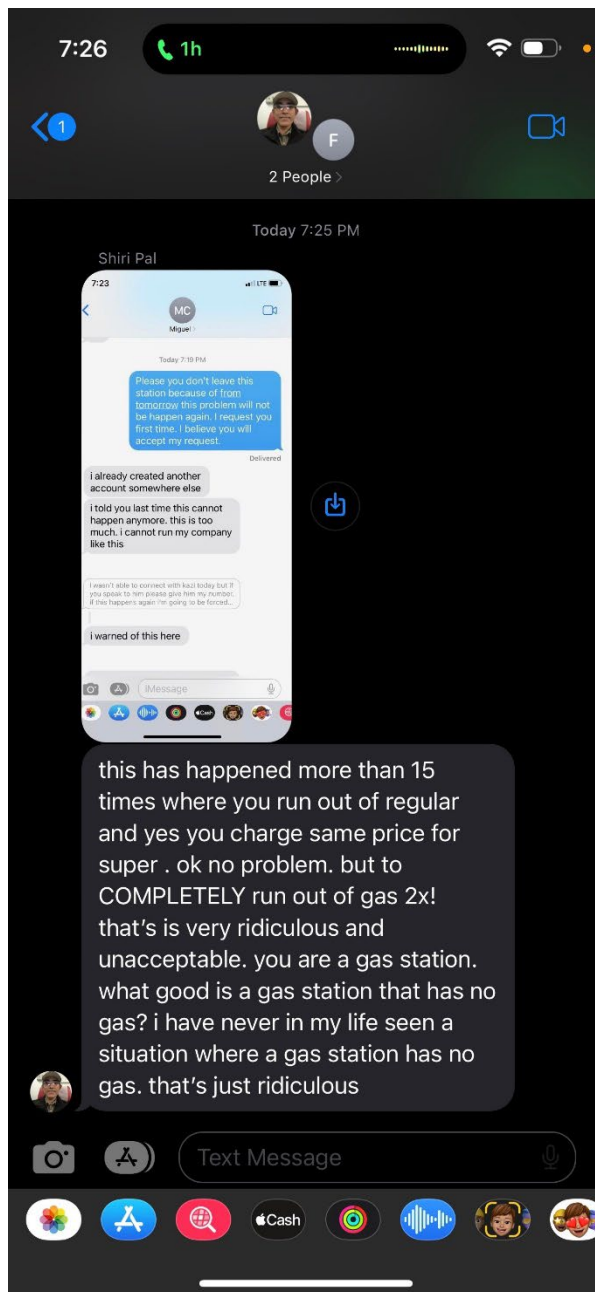
Date	Super Vol.	Capacity	Fuel Lvl	Reg. Vol.	Capacity	Fuel Lvl	Diesel Vol.	Diesel Capacity	Diesel Lvl	Diesel 2 Vol.	Diesel 2 Capacity	Diesel 2 Lvl
7/11/23	924	12000	1%	6186	12000	52%	1235	12000	10%	1499	15000	10%
7/12/23	924	12000	1%	3664	12000	31%	805	12000	7%	111	15000	1%
7/22/23	2609	12000	2%	523	12000	4%	1117	12000	9%	5142	15000	34%
7/23/23	2471	12000	2%	499	12000	4%	1117	12000	9%	4767	15000	32%
7/24/23	2471	12000	1%	498	12000	4%	1071	12000	9%	2759	15000	18%
7/31/23	990	12000	1%	530	12000	4%	2304	12000	19%	2725	15000	18%
8/2/23	904	12000	1%	984	12000	8%	1871	12000	16%	3866	15000	26%

Store 968 American 1 Gas, Inc.

Date	Super Vol.	Super Capacity	Fuel Lvl	Reg. Vol.	Regular Capacity	Fuel Lvl	Diesel Vol.	Diesel Capacity	Diesel Lvl
7/11/23	1918	10000	19%	6765	20000	34%	348	6000	6%
7/12/23	1057	10000	11%	254	20000	1%	348	6000	6%
7/16/26	1057	10000	11%	254	20000	1%	348	6000	6%
7/17/23	7622	10000	76%	249	20000	1%	1051	6000	18%
7/20/23	5253	10000	53%	248	20000	1%	1863	6000	31%
7/25/23	3428	10000	34%	718	20000	4%	3828	6000	64%
7/26/23	2210	10000	22%	215	20000	1%	3303	6000	55%
7/27/23	861	10000	9%	214	20000	1%	2263	6000	38%
7/31/23	2026	10000	20%	373	20000	2%	2595	6000	43%
8/4/23	230	10000	2%	338	20000	2%	2275	6000	38%
8/5/23	230	10000	2%	387	20000	2%	1674	6000	38%
8/6/26	227	10000	2%	386	20000	2%	1345	6000	22%
8/7/23	227	10000	2%	385	20000	2%	766	6000	13%

As evident from the tables above, the Operators endured long periods of little to no regular, super, and diesel fuel. Through communications with Crown Oil on or about August 1, the Debtors' fuel delivery service, the Operators have been informed that all deliveries to these Operators have been immediately suspended.

Tensions have been high with the Operators' customers—even amounting to violence and vandalism in their stores due to the outrage caused by the lack of fuel. Below is a message from a Fedex manager, one of the Operators' largest account holders:



II. RELIEF REQUESTED

13. The Operators request that this Court lift the automatic stay to allow the disconnection of the Debtors' credit card machines and black boxes to enable them to purchase gas from third party suppliers. The Operators believe cause exists under § 362 of the Bankruptcy Code to prevent irreparable harm; through the filing of this Motion, virtually all of the Operators have been without fuel for over seven days and are on the verge of shuttering its doors.

14. Emergency consideration of the Motion is requested as the Operators have alerted the Debtors as to the dire situation and no assistance or assurances of fuel delivery have been provided. The undersigned counsel has conferred with counsel for the Debtors to permit the disconnection of the credit card machines on August 8, 2023, but has not received a response as to the request.

WHEREFORE, American 1 Gas, Inc., Broadway Fuel, Inc., Commack Fuel, Inc., Monto Food Mart, Inc., Prime Petro, Inc., and Riverdale Fuel, Inc. request that this Court enter an order lifting the automatic stay and for all other equitable relief to which they may be entitled.

Houston, Texas
Dated: August 10, 2023

/s/ Susan Tran Adams

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Counsel for American 1 Gas, Inc., Broadway Fuel, Inc., Commack Fuel, Inc., Monto Food Mart, Inc., Prime Petro, Inc., and Riverdale Fuel, Inc.

Certificate of Conference

I conferred with Benjamin Kadden, counsel for the Debtors, via electronic mail on August 10, 2023 who provided the Debtors' opposition to the Motion.

/s/ Susan Tran Adams

Susan Tran Adams

Certificate of Service

I certify that on August 10, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Susan Tran Adams

Susan Tran Adams

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

)
) Chapter 11
)

MOUNTAIN EXPRESS OIL COMPANY, *et al.*,¹

Debtors.

) Case No. 23-90147 (DRJ)
)
) (Jointly Administered)
) (Emergency Relief Requested)

ORDER LIFTING THE AUTOMATIC STAY

Came on for consideration *Emergency Motion to Lift the Automatic Stay* filed by American 1 Gas, Inc., Broadway Fuel, Inc., Commack Fuel, Inc., Monto Food Mart, Inc., Prime Petro, Inc., and Riverdale Fuel, Inc (the “Operators” and the “Motion”). After consider the pleading and evidence, the Court finds cause to grant the requested relief. It is therefore,

ORDERED:

1. The Motion is granted.
2. The Operators are authorized to use reasonable means necessary to facilitate the purchase of fuel from non-debtor entities, including the disconnection of the Debtors’ credit card processing machines and black boxes.

Dated: _____, 2023

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

¹ A complete list of each of the Debtors in these Chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at www.kccllc.net/mountainexpressoil. The location of Debtor Mountain Express Oil Company’s principal place of business and the Debtors’ service address in these Chapter 11 cases is 3650 Mansell Road, Suite 250, Alpharetta, GA 30022.